

BAIL PARTNERSHIP AGREEMENT TRAINING



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TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways ←
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A

KEY TAKEAWAYS ABOUT BAIL PARTNERSHIP AGREEMENT AND MICHIGAN LAW

- 1 Cash Bail, especially unaffordable bail, is supposed to be the rare exception.
- 2 Cash Bail cannot be imposed unless the court (1) makes a finding that your client is a danger to the public or presents a risk of non-appearance and (2) makes a finding that non-cash conditions can't manage that risk.
- 3 Before imposing cash bail, the court must determine how much your client can afford. If your client's household income is less than 200% of the federal poverty line (\$55,500 for a family of 4 - 2022) the court must presume they cannot afford to pay any bail.
- 4 Bail redetermination hearings are guaranteed for anyone who does not post bail within 24-72 hours, depending on the circumstances.

If you remember only four things: remember these!

OVERVIEW OF HOW BAIL PARTNERSHIP AGREEMENT PROMOTES PUBLIC SAFETY & THE EFFECTIVE ADMINISTRATION OF JUSTICE

1	<p>Cash Bail harms defendants, families & communities</p>	<ul style="list-style-type: none"> • Pretrial incarceration results in loss of job, housing, educational opportunities, etc. • 500,000 people (63% of total jail pop.) are in jail every night • Daily cost of incarceration to U.S. taxpayers of more than \$38 million. Annual cost is \$14 billion a year. • 9.7% increase in likelihood of being charged with new misdemeanors & 32.3% increase in likelihood of being charged with new felonies
2	<p>Cash Bail forces plea bargains</p>	<ul style="list-style-type: none"> • Defendants are 30% more likely to plead guilty when detained, and they receive longer sentences
3	<p>Cash Bail diminishes public safety</p>	<ul style="list-style-type: none"> • Compared to identical people released pretrial, low-risk people held 3+ days are arrested 74% more during the pretrial phase and 51% more up to 2 years later • Use of cash bail does not ensure public safety
4	<p>Cash Bail does not reduce failures to appear</p>	<ul style="list-style-type: none"> • Mere nonappearance vs. willful flight (absconding) • The Bail Project clients appear at over 90% of their court appearances • 2013 study found FTA rates increase the longer a person is detained pretrial
5	<p>Racial disparate impact</p>	<ul style="list-style-type: none"> • Both Black and white judges sentence Black offenders more severely than white offenders.

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DEFENSE ATTORNEYS ARE AT THE HEART OF THE BAIL PARTNERSHIP AGREEMENT!

- Defense attorneys must have a **meaningful** and **confidential** opportunity to speak with accused individuals to establish rapport and ensure accuracy and completeness of the Financial Information Intake Form and to gather other relevant information.
- This means you must be given enough time to:
 - Ask about and scrutinize prior criminal history, FTA history, and warrant history.
 - Discuss with your client what types of non-cash conditions they can comply with (e.g., a stable residence they can stay at away from the alleged victim, how conditions might affect employment, ability to attend drug tests, etc.).
 - Never offer a tether without asking your client about their ability to comply with one.

DEFENSE ATTORNEYS NEED TO KNOW KEY DOCUMENTS

- Administrative Order
- Bail Partnership Agreement
- The Bail Partnership Agreement will be summarized in an administrative order that will be available on the 36th District Court's website.
- The full Agreement will be available on the 36th District Court's website.
- Financial Information Intake Form – Exhibit G to Appendix I of the Bail Partnership Agreement

DEFENSE ATTORNEYS NEED TO KNOW WHAT THEIR CLIENTS CAN AFFORD

You will use a Financial Information Intake Form when meeting with clients to determine ability to pay cash bond and assist with release arguments (see next slide).

- The form asks questions to elicit information about employment, income and assets, expenses and provides a guide to determine poverty level
- The Financial Information Intake Form will be available on the 36th District Court's website and will be updated annually. A copy also appears in the next slide.

FINANCIAL INFORMATION INTAKE FORM

Name: _____

Are you receiving government assistance such as disability, food stamps, housing vouchers, social security, Bridge card? (Check one) Yes _____ No _____

MONTHLY INCOME	AMOUNT	MONTHLY EXPENSES	AMOUNT
Monthly Income	\$	Rent / Mortgage / Utilities	\$
Income of Other Household Members Available and Accessible to You (such as spouse)	\$	Loan Payments / Credit Card Payments	\$
		Child Care / Child Support / Alimony	\$
		Health Care/ Medical / Dental	\$
		Fines, fees, restitution, bail in other cases	\$
		Other (such as gas, insurance, food)	\$
Total Estimated Monthly Income	\$	Total Estimated Monthly Expense	\$

Please explain any other current conditions (examples: marital status, kids/dependents, length of residency, mental health, disability, loss of income):

2022 Poverty Level			
Household size	100%	140%	200%
1	\$13,590	\$19,026	\$27,180
2	\$18,310	\$25,634	\$36,620
3	\$23,030	\$32,242	\$46,060
4	\$27,750	\$38,850	\$55,500

For a **personal bond**, without other disqualifying factors, anything below 200% of the poverty level is a presumptive qualification.

For an **appointed attorney**, income level below 140% of the poverty level is a presumed qualification.

For Poverty Level: each additional person adds: \$4,720 for 100% | \$6,608 for 140% | \$9,440 for 200%

FINANCIAL INFORMATION INTAKE FORM

This form reflects 2022 Federal Poverty Guidelines. The form will be updated annually on the 36th District Court webpage.

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MCR 6.106'S DOUBLE PRESUMPTION AGAINST CASH BAIL

The General Rule

FIRST PRESUMPTION: General rule is release with only standard basic conditions unless evidence supports a finding of danger to public or failure to appear. MCR 6.106(C).

SECOND PRESUMPTION: Before considering cash bail, the court must find on the record that other, non-cash conditions won't suffice (e.g., reporting to probation, no contact orders, support from friends or family). MCR 6.106(D), (E).

MCR 6.106's DOUBLE PRESUMPTION AGAINST CASH BAIL

Cases Where Pre-trial Detention Without Bail Is Permitted

MCR 6.106(B)—Cases Where Pre-Trial Detention May Be Ordered: Under MCR 6.106(B) and Art. I, § 15 of the Michigan Constitution, the court may order pre-trial detention without cash bond in certain cases. See, e.g., Appendix 1, p. 3, Section A.2.c.

- Pre-trial detention without bond in such cases is permitted, but only when the court also finds that “proof of the Accused Individual’s guilt is evident or the presumption great.”
- If pre-trial detention is not ordered pursuant to MCR 6.106(B), the court must still conduct the same ability to pay/flight risk/danger to the public inquiry that applies in all bail cases.

MCR 6.106's DOUBLE PRESUMPTION AGAINST CASH BAIL

Other Cases Where the Presumption Against Cash Bail is Modified

FELONY NON-SUPPORT

- Cash bond is allowed but must normally be affordable.
- MCL 750.165 governs the imposition of cash bond in felony-non support cases.
- It provides that interim bond must initially be set at 25% of the amount the defendant owes or \$500, whichever is greater.
- However, at arraignment the amount must be reduced to zero or an affordable amount unless the court makes a finding of danger to the public or a risk of non-appearance.

MCL 765.6a Cases

- Some cash bond is required in these cases, but it should be nominal in many cases.
- Statute requires some cash bail for cases in which
 - (1) the alleged crime was committed while defendant was out on a cash bond or surety or
 - (2) the defendant has been convicted of two felonies in five years.
- Cash bond must still be affordable (or nominal) unless the court makes a finding of danger to the public or a risk of non-appearance.

THE U.S. CONSTITUTION ALSO LIMITS THE USE OF CASH BAIL

Pre-trial detention can only be justified by actual evidence of danger to the public or flight risk. *U.S. v. Salerno*, 481 U.S. 739 (“In our society liberty is the norm, and detention prior to trial . . . is the carefully limited exception.”)

Wealth-based discrimination in the criminal legal system receives heightened scrutiny. See *Bearden v. Georgia*, 461 U.S. 660, 672–673 (unconstitutional to “deprive [one] of [their] conditional freedom simply because, through no fault of [their] own, [they] cannot pay”).

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PRE-TRIAL RELEASE HYPOTHETICALS FOR DISCUSSION (1 OF 5)

Charge	<ul style="list-style-type: none">• Defendant is accused of getting into a fight with his romantic partner and the mother of two of his children in which he shoved her and knocked her over, giving her a concussion.• He is charged with assault GBH and misdemeanor domestic violence.
Defendant criminal history	<ul style="list-style-type: none">• Defendant is charged as habitual fourth based on two prior convictions for drug possession two and five years ago respectively and one from six years ago for felony non-support relating to his two other children by another mother.• Defendant is on probation for one of the drug charges.• He also has a juvenile adjudication for drug possession and has had two additional arrest warrants (but no convictions) for domestic violence.
Life circumstances	<ul style="list-style-type: none">• Defendant is 27 and has a new job working at McDonalds for minimum wage.• He picks up his eldest child from school every day and takes her to her mother's house (his ex-partner). The mother works full time.

QUESTIONS?
COMMENTS?



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THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

When Can Bond Be Imposed?

The Court cannot impose cash bond unless:

1. It finds **by clear and convincing evidence** that is **particular to the defendant** that they present an **identified and articulable danger** to any person or the public **that cannot be managed by non-cash conditions.**
2. It finds **by a preponderance of the evidence** that is **particular to the defendant** that unaffordable bail **is reasonably necessary** to ensure the Defendant's appearance and that the risk of non-appearance **cannot be managed by non-cash conditions.**

THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

What goes in to determining if there is a danger to the public or a flight risk?

- The court must consider any evidence or proffers of evidence you make.
- You must be allowed to examine and rebut any evidence, documents, or reports, that might be used against your client at the arraignment.
- The court can consider the police report but must also consider facts you proffer.
- The fact that a charge is violent or assaultive is NOT enough, on its own, to establish a danger to the public, but the court can consider the specific alleged facts of the offense.
- The court can consider prior failures to appear but must also consider the reasons for the prior FTAs, including whether they were deliberate or attributable to health or poverty related circumstances.

THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

Non-Cash Conditions

The court may not impose any condition (e.g., drug testing, tethers) that requires your client to make payments in order to be released or that requires ongoing payments in order to remain free.

THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

For almost all Accused Individuals, cash bail shall be set at an amount less than or equal to the amount that the Accused Individual can afford”

This means that any time cash bail is contemplated, the court **must** make an inquiry into how much your client can afford.

If your client’s household income is less than 200% of the federal poverty guidelines, there is a presumption that your client cannot afford any cash bail.

Household Size	200% of Federal Poverty Line
1	\$27,180
2	\$36,620
3	\$46,060
4	\$55,500
8	\$93,260

THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

What money can the court consider?

The court can consider “only such assets or income that are available and accessible to the Accused Individual at the time of the Arraignment.” The defendant must be “actually capable of paying without manifest hardship. Manifest hardship includes but is not limited to: having to forego ordinary or necessary living expenses such as housing, food, medical, childcare, or transportation costs.”

In other words:

- The court can't expect your clients to take on debt to family or friends to pay bond.
- Your client must actually be able to access the funds in question or have someone who can immediately help.
- The court **cannot** base bond on what your client could afford to pay a bondsman.

FINANCIAL INFORMATION INTAKE FORM

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MONTHLY INCOME	AMOUNT	MONTHLY EXPENSES	AMOUNT
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Income of Other Household Members Available and Accessible to You (such as spouse)	\$	Loan Payments / Credit Card Payments	\$
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		Health Care/ Medical / Dental	\$
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		Other (such as gas, insurance, food)	\$
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THE BAIL PARTNERSHIP AGREEMENT AND CASH BOND

Financial Information Intake Form

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THE BAIL PARTNERSHIP AGREEMENT – PRACTICAL GUIDANCE

Tips For Interviewing Your Client

Allegations and Facts

- Review the police report. You are entitled to it. Talk to your client about the allegations.
- Discuss with your client the reasons for any FTA history, if applicable.
- Consider how the allegations or facts might demonstrate lack of flight risk or lack of recurring danger.
- Consider non-cash conditions that work for your client.

Finances

- Understand household income (wages, etc.) and major expenses.
- Be sure to consider any issues of self-incrimination.
- Find out how much your client can *actually* afford without taking on debt and be ready to proffer that.
- Remember the 200% poverty line presumption!

THE BAIL PARTNERSHIP AGREEMENT – PRACTICAL GUIDANCE

Tips For Arguing Bond

- Be ready to argue why prior FTAs will not predict future FTAs (e.g., be ready to explain health or poverty related explanations for prior FTAs or to explain differences between prior cases and this one).
- Be ready to argue why prior criminal conduct doesn't render your client a danger to the public.
 - Find out if your client previously pled guilty to get out of jail
 - Prior violent criminal history should only be relevant if the current charges establish a pattern of harm
 - Prior *arrests*, on their own, don't prove anything
 - Be aware of elapsed time since prior conduct and any life changes your client has experienced
- Remember that the judge *must* consider least restrictive, non-financial, release conditions. Be sure to proffer release conditions that your client can realistically complete.
- Remember that a serious charge *is not enough* as a grounds to impose cash bond. An individualized analysis is required.
- Remember that there must be a nexus between the condition of release and addressing a danger to the public/flight risk.

THE BAIL PARTNERSHIP AGREEMENT – PRACTICAL GUIDANCE

Tethers Should Not Be a Kneejerk Alternative to Cash Bail

- Be sure to have discussed with a client the possibility of realistically complying with tethers before advocating for them.
- Lawyers must realize (and should remind judges) that getting a tether attached can take several days. If the client will lose their job or suffer collateral consequences as a result of any delays, highlight this for the Court.
- Tethers, drug tests, and other forms of surveillance are serious infringements on a defendant's liberty. Advocates must be prepared to argue that they are not proportionate to any flight risk or danger to the public, and courts must take these arguments seriously.
- Compliance with tethers should be reviewed every 30 days and a defense motion to remove a tether should be considered.

THE BAIL PARTNERSHIP AGREEMENT- PRACTICAL GUIDANCE

Your client has the right to competent representation. If confronted with new allegations or evidence during the arraignment, tell the court you need additional time to consult with the defendant and consider whether a continuance is necessary.



**STOP & SLOW DOWN IF YOU NEED
MORE TIME WITH YOUR CLIENT!!!**

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THE BAIL PARTNERSHIP AGREEMENT- BAIL DETERMINATION HEARINGS

The basics

There are two types of Bail Redetermination hearings

Hearings in cases where bond was supposed to be affordable:

If the court imposed Cash Bond in an amount the court found to be **affordable**, the defendant is entitled to a Bail Redetermination hearing **the next day** if they have not yet posted bond.

Hearings in cases where bond was supposed to be unaffordable:

If the court imposed Cash Bond in an amount the court found to be **unaffordable**, the defendant is entitled to a Bail Redetermination hearing **within 48-72 hours*** (or the next business day) if they have not yet posted bond.

*If the original arraignment was on a Wednesday, the redetermination hearing will be scheduled to occur on Friday unless Friday is a court holiday.

THE BAIL PARTNERSHIP AGREEMENT- BAIL DETERMINATION HEARINGS

Overview of Process

If Bail Was Intended to Be Affordable

- Hearing occurs the next day.
- The court must inquire why bond was not posted.
- Be ready to explain why your client was unable to post bond and argue for a reduction or elimination.
- Review of prior bond decision is *de novo*.
- Evidence from original arraignment may be considered.

If Bail Was Intentionally Unaffordable

- Hearing occurs 48-72 hours after arraignment.
- The court must make a *de novo* determination of whether your client should be detained due to a public danger or risk of non-appearance.
- Evidence from original arraignment may be considered.

THE BAIL PARTNERSHIP AGREEMENT- BAIL DETERMINATION HEARINGS

Practice Pointers

- You need to review with your client what happened at the original arraignment.
- If it's an affordable Bail Redetermination hearing, be prepared to explain why bond actually is **not** affordable and what, if anything, would be.
- Be prepared to rebut any arguments the court relied upon to find your client a flight risk or danger to the public. Probe the details of prior FTAs or violent allegations with your client.

Note that some defendants do not pay bail on purpose. This is particularly true of people with holds in other jurisdictions who want to get credit for time-served. If your client is not paying on purpose, be ready to inform the court that your client is not seeking a change in bond for this reason. If you so inform the court, it may continue the bond without raising any issues under the Agreement.

THE BAIL PARTNERSHIP AGREEMENT- APPEALS OF BAIL DETERMINATIONS

- An adverse bail decision may be appealed to the circuit court, as of right, pursuant to MCR 6.106(H). (And circuit court decisions, in turn, are appealable as of right to the Court of Appeals.)
- The best practice is to file any appeal ASAP, and in **less than 21 days**.
- If a client wants to appeal, you should order the transcript of both the arraignment and the Bail Redetermination hearing immediately and on an expedited basis.
- Appeals apply an abuse of discretion standard.
- Strategically, in a felony case, you should consider whether an appeal to the circuit court will be more or less effective than arguing bond *de novo* after the case is bound over. This may depend on whether you intend to waive the preliminary exam.

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PRE-TRIAL RELEASE HYPOTHETICALS FOR DISCUSSION (2 OF 5)

Charge	<ul style="list-style-type: none">• Retail fraud.• Defendant allegedly shoplifted several hundred dollars of goods from Target.• Defendant was given \$500 bond at his original arraignment, which the court found to be affordable.• This is a bail redetermination hearing.
Defendant criminal history	<ul style="list-style-type: none">• Convicted of retail fraud on five different occasions• Defendant initially failed to appear for trial during their second conviction and the trial had to be rescheduled.• Defendant appeared for the rescheduled trial and was convicted.
Life circumstances	<ul style="list-style-type: none">• Defendant is homeless, and sometimes resides at a homeless shelter, sometimes crashes on his sister's couch

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FAILURES TO APPEAR

Know why people fail to appear

Non-appearance v. Willfully avoiding prosecution (absconding)

- Many failures to appear are the result of practical issues: the threat of job loss, lack of childcare, lack of transportation.
- The Bail Project has bailed out over 23,000 people nationwide. 90% of those people show up to court, and 30% have their cases dismissed or they are found not guilty once able to fight their case from a position of freedom.
- Studies show that personal bonds are at least as effective as cash bond at ensuring that people come back to court.

See, e.g., Arpit Gupta, Christopher Hansman, & Ethan Frenchman, *The Heavy Costs of High Bail: Evidence from Judge Randomization*, 45 *Journal of Legal Studies* 471, 475 (2016); Michael R. Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, Pre-Trial Justice Institute Report at 11 (October 2013) (concluding that “unsecured bonds offer decisionmakers the same likelihood of court appearance as do secured bonds”).

FAILURES TO APPEAR

Know the Partnership Agreement's FTA Provisions

All of the information described in this training apply equally to Accused Individuals arrested on *capias* warrants.

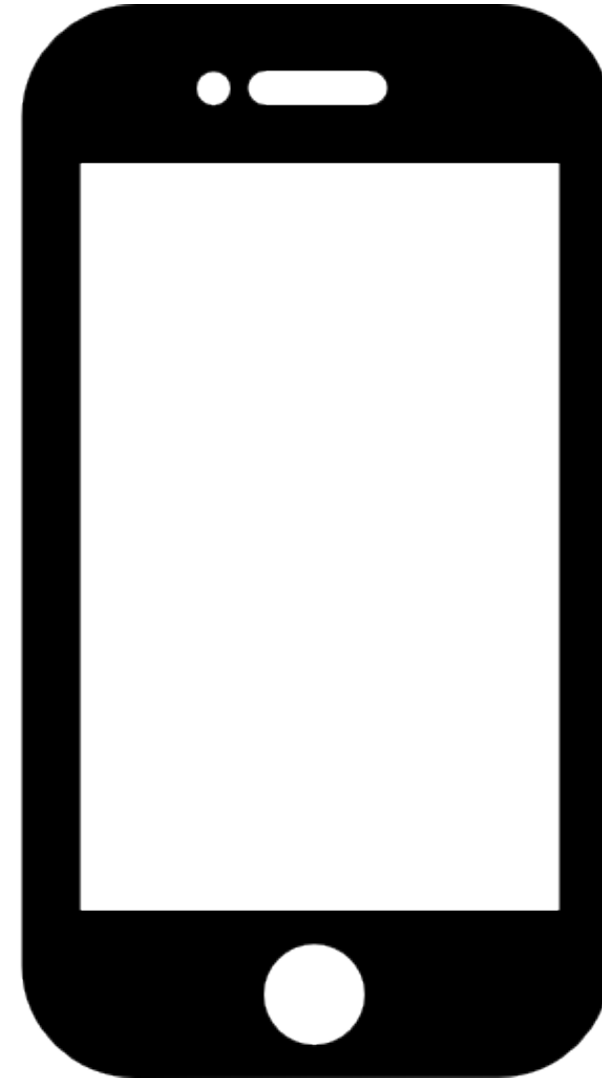
The court can consider the failure to appear that resulted in the *capias* warrant as a factor when assessing the risk of non-appearance. But the court must also consider explanations for the FTA, and consider other non-cash measures for ensuring appearance in the future.

For misdemeanor cases (other than assaults, MCL 750.81, 750.82, 750.81a, 750.82a), the first time a defendant misses a hearing, it will automatically be rescheduled instead of a *capias* warrant being issued.

FAILURES TO APPEAR

Prevent Them From Happening

- All Accused Individuals will be able to sign up for text reminders in the courthouse.
- Be sure to offer to sign Accused Individuals up immediately for reminders online.
- Sign up here!
<https://www.36thdistrictcourt.org/online-services/court-date-reminders>
- Research shows that text reminders are the single most effective way of making sure people come back to court!



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FAILURES TO APPEAR

New Legislation and Court Rules

Except in cases involving assaultive offenses or crimes involving domestic violence, anyone with an outstanding bench warrant can voluntarily present themselves at court within 1 year of the warrant being issued and be arraigned within two hours. A defendant who follows these procedures is presumed not to be a flight risk. MCL 762.10d; newly amended MCR 6.105.

Except in cases involving assaultive offenses or crimes involving domestic violence, a bench warrant presumptively* should not issue for 48 hours after a defendant fails to appear for a hearing, and bail should not be revoked during that time, to allow the defendant to voluntarily appear. MCL 764.3; newly amended MCR 6.103.

*The presumption can be overcome on various grounds as provided in MCL 764.3(3).

AMERICANS WITH DISABILITIES ACT (ADA)

What is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA) became law in 1990. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else. The ADA gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.

Who is covered?

- Everyone. The ADA defines “disability” broadly as “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (c) being regarded as having such an impairment. 42 U.S.C. section 12102
- Major life activities “include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” Id.
- Cases brought under the ADA should focus on “whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of ‘disability’”. The question of whether an individual meets the definition of ‘disability’ under this part should not demand extensive analysis.” 28 C.F.R. section 35.101.
- A diagnosis is not necessary.

AMERICANS WITH DISABILITIES ACT (ADA)

Rates of Disability in Jails per DOJ Bureau of Statistics for State and Federal

- Vision – 7.3%
- Hearing – 6.5%
- Ambulatory – 9.5%
- Cognitive – 30.9%
- Any disability – 39.9%
- These rates are 3x to 6x the rates in the general population

What are you looking for?

- Reasonable accommodations
 - A reasonable accommodation under Section 504 is a change, adaptation, or modification to a policy, program, service, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job.
 - Accommodations are typically grouped into four categories: presentation, response, setting, and timing and scheduling.
- Inability to pay as a *result* of a disability and/or the poverty programs upon which disabled people rely (like SSI)
- SSI and SSDI or other state and federal monetary benefits cannot be used to pay bail
- Consider whether previous FTAs or alleged technical violations were *themselves* a result of inadequate accommodations or an inability to comply with onerous release conditions

TOPICS TO BE COVERED

- ❖ Introduction/Key Takeaways
- ❖ The Foundation of the Agreement is YOU
- ❖ Knowing Your Clients' Rights Under Michigan Law
- ❖ Exercise: Hypotheticals and Q&A
- ❖ The Bail Partnership Agreement—Cash Bond
- ❖ The Bail Partnership Agreement—Practical Guidance
- ❖ The Bail Partnership Agreement—Bail Redetermination Hearings
- ❖ Exercise: Hypotheticals and Q&A
- ❖ Failures to Appear
- ❖ Additional Law And Issues Relating To Arraignment
- ❖ Exercise: Hypotheticals and Q&A ←

PRE-TRIAL RELEASE HYPOTHETICALS FOR DISCUSSION (3 OF 5)

Charge	<ul style="list-style-type: none">• Carjacking• Defendant and a co-conspirator allegedly induced co-conspirator's ex-girlfriend to meet in a dark parking lot• Allegedly pretended to be armed by sticking hands in their pockets to resemble a firearm and threatened to shoot the victim if she didn't get out of the car and turn the car over to them.• At arraignment, defendant was given a bond of \$100,000 cash/surety, which the court found to be unaffordable. This is a bail redetermination hearing.
Defendant criminal history	<ul style="list-style-type: none">• Defendant has a prior conviction for driving without insurance.• He missed a hearing during those proceedings because he did not have a way to get to court.• He was later arrested on a capias warrant and convicted after that.
Life circumstances	<ul style="list-style-type: none">• Defendant is 18 years old and resides with his mother

PRE-TRIAL RELEASE HYPOTHETICALS FOR DISCUSSION (4 OF 5)

Charge	<ul style="list-style-type: none">• Assault with intent to murder and armed robbery after a stick-up at a convenience store• Defendant entered conversation with a customer and pistol whipped the customer, as captured clearly on store video footage.• He then fled the scene on foot and was later apprehended at his family home.
Defendant criminal history	<ul style="list-style-type: none">• Previously pled guilty to retail fraud and felon-in-possession• Was charged with armed robbery in another convenience store robbery, but the charges were dropped after the store clerk recanted an identification of the defendant
Life circumstances	<ul style="list-style-type: none">• Defendant has a wife and infant child

PRE-TRIAL RELEASE HYPOTHETICALS FOR DISCUSSION (5 OF 5)

Charge	<ul style="list-style-type: none">• Possession of heroin with intent to distribute (based on having two baggies in his car during a traffic stop).
Defendant criminal history	<ul style="list-style-type: none">• Habitual third designation because of two prior drug convictions.• Two years ago, convicted of possession of heroin; five years ago he pled guilty to assault.• Has a juvenile adjudication from ten years ago for possession of marijuana with intent to distribute.
Life circumstances	<ul style="list-style-type: none">• Defendant has two children by a former partner.• He is employed as a janitor at Wayne State and pays child support.

PRE-TRIAL RELEASE HYPOTHETICALS – BONUS ROUND

You meet with an arrestee before the arraignment hearing and have clear evidence that they are suffering from a mental health issue and are unable to assist you with completing the Financial Information Intake Form. They are upset, unable to follow your questions, and yelling at you during the intake. At the arraignment hearing, the defendant says “you don’t speak for me! You are in bed with these corrupt judges and prosecutors.” What do you do?

QUESTIONS?
COMMENTS?



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